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3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 * * *

7 BENJAMIN ADAMS,

Case No. 2:16-cv-00003-PAL

8 Plaintiff,

9 v.

ORDER

10 NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

(Mot. to Remand – ECF No. 18)
(Cross-Mot. to Affirm – ECF No. 25)

11
12 Defendant.

13 This matter involves Plaintiff Benjamin Adam’s appeal and request for judicial review of
14 the Acting Commissioner of Social Security, Defendant Nancy A. Berryhill’s final decision
15 denying his claims for disability insurance benefits under Title II of the Social Security Act (the
16 “Act”), 42 U.S.C. §§ 401–33, and supplemental security income under Title XVI of the Act, 42
17 U.S.C. §§ 1381–83.¹ This case is referred to the undersigned magistrate judge for a determination
18 and entry of final judgment pursuant to 28 U.S.C. § 636(c) and Rule 73 of the Federal Rules of
19 Civil Procedure. *See* Reference Order (ECF No. 28).

20 **BACKGROUND**

21 In December 2012, Mr. Adams protectively filed a Title II application for a period of
22 disability and a Title XVI application for supplemental security income. AR 16, 145–47.² His
23 work history included jobs as a retail manager and tax preparer. AR 179. In his applications,

24
25 ¹ Nancy A. Berryhill is now the Acting Commissioner of Social Security. Pursuant to the Federal Rules of
26 Civil Procedure and the Social Security Act, the court therefore substitutes Nancy A. Berryhill for Carolyn
27 W. Colvin as the defendant in this suit. *See* Fed. R. Civ. P. 25(d) (allowing automatic substitution of a
28 successor to a public officer who is a party to an action but ceases to hold office while the action is pending);
42 U.S.C. § 405(g).

² “AR” refers to the Administrative Record (ECF No. 17-1), a certified copy of which was filed under seal
on the court’s docket and delivered to the undersigned upon the Commissioner’s filing of her Answer.

1 Adams claimed he was unable to work because of back problems. AR 53. The Social Security
2 Administration denied his applications initially and on reconsideration due to insufficient medical
3 evidence and his failure to cooperate by submitting questionnaire forms as requested. AR 53–78.

4 An administrative law judge (“ALJ”) held a hearing on May 2, 2014, where Mr. Adams
5 appeared with counsel. AR 30–50. Adams testified his back pain was the result of a degenerative,
6 hereditary condition that caused tingling, numbness, and neuropathy in his legs and feet. AR 42–
7 43. In a July 2014 decision, the ALJ found that Adams was not disabled. AR 16–25.

8 Mr. Adams requested review of the ALJ’s decision by the Appeals Council, but the ALJ’s
9 decision became final when the Appeals Council denied review. AR 1–6. In January 2016, Adams
10 filed a complaint in federal court, seeking judicial review of the adverse decision pursuant to 42
11 U.S.C. § 405(g). The Commissioner filed an Answer (ECF No. 14) on April 18, 2016.

12 Mr. Adams has filed a Motion for Reversal and/or Remand (ECF No. 18), and the
13 Commissioner filed a Cross-Motion to Affirm and Response (ECF No. 25). Adams did not file a
14 reply and the deadline to do so has expired. The court has reviewed the record and considered the
15 parties’ motions. For the reasons explained, the court denies Adams’ Motion and grants the
16 Commissioner’s Cross-Motion. The ALJ’s finding that Adams has not been under a disability as
17 defined in the Social Security Act from June 1, 2010 through the date of the July 8, 2014 decision
18 is supported by substantial evidence.

19 **DISCUSSION**

20 **I. APPLICABLE LAW**

21 **A. Judicial Review of Disability Determinations**

22 Federal district courts review administrative decisions in social security benefits cases
23 under 42 U.S.C. § 405(g). However, judicial “review of social security determinations is limited.”
24 *Treichler v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1098 (9th Cir. 2014). After an ALJ has
25 held a hearing and the decision is final, § 405(g) allows a disability claimant to seek judicial review
26 of an adverse decision by filing a lawsuit in a federal district court within the district where the
27 claimant lives. The statute authorizes the court to enter “a judgment affirming, modifying, or

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1 reversing the decision of the Commissioner of Social Security, with or without remanding the
2 cause for a rehearing.” 42 U.S.C. § 405(g).

3 The ALJ’s findings of fact are conclusive if they are supported by “substantial evidence.”
4 42 U.S.C. § 405(g). The court may reverse “only if the ALJ’s decision was not supported by
5 substantial evidence in the record as a whole or if the ALJ applied the wrong legal standard.”
6 *Shaibi v. Berryhill*, 883 F.3d 1102, 1106 (9th Cir. 2017). “Substantial evidence means more than
7 a mere scintilla, but less than a preponderance. It means such relevant evidence as a reasonable
8 mind might accept as adequate to support a conclusion.” *Trevizo v. Berryhill*, 871 F.3d 664, 674
9 (9th Cir. 2017). To determine whether the ALJ’s findings are supported by substantial evidence,
10 a court “must consider the entire record as a whole and may not affirm simply by isolating a
11 specific quantum of supporting evidence.” *Ghanim v. Colvin*, 763 F.3d 1154, 1160 (9th Cir. 2014).
12 “Where evidence is susceptible to more than one rational interpretation, the ALJ’s decision should
13 be upheld.” *Trevizo*, 871 F.3d at 674–75 (quotation omitted).

14 **B. Disability Evaluation Process**

15 A five-step sequential evaluation process is used to determine whether a claimant is
16 disabled and eligible for benefits:

17 First, the agency must consider the claimant’s current work activity. Second, the
18 agency must consider the medical severity of the claimant’s impairments. Third,
19 the agency must determine whether the severity of those impairments is sufficient
20 to meet, or medically equal, the criteria of an impairment listed in three of the Social
21 Security Act’s implementing regulations, published at 20 C.F.R. §§ 404.1520(d),
22 404.1525–26. Fourth, the agency determines whether the claimant can perform
past relevant work in light of the claimant’s residual functional capacity. Fifth, the
agency assesses whether the claimant can make an adjustment to other work that
exists in significant numbers in the national economy, based on the claimant’s
residual functional capacity.

23 *Shaibi*, 883 F.3d at 1106 (citing 20 C.F.R. § 404.1520(a)). “ ‘The claimant carries the initial
24 burden of proving a disability in steps one through four.’” *Id.* (quoting *Burch v. Barnhart*, 400
25 F.3d 676, 679 (9th Cir. 2005)). To meet this burden, the claimant must demonstrate an “inability
26 to engage in any substantial gainful activity by reason of any medically determinable physical or
27 mental impairment which can be expected . . . to last for a continuous period of not less than 12
28 months.” 42 U.S.C. § 423(d)(1)(A). If the claimant establishes an inability to continue his or her

1 past work with specific medical evidence, the burden shifts to the Commissioner in step five to
2 show that the claimant can perform other substantial gainful work. *Shaibi*, 883 F.3d at 1106.

3 **II. THE ALJ’S DECISION**

4 An ALJ is required to follow the five-step process to determine whether a claimant is
5 disabled. 20 C.F.R. § 416.920. If an ALJ makes a finding of disability or non-disability at any
6 step, no further evaluation is required. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4); *Barnhart v.*
7 *Thomas*, 540 U.S. 20, 24 (2003).

8 Here, the ALJ followed the five-step process and issued an unfavorable decision in July
9 2014. AR 16–25 (the “Decision”). Adams does not challenge the ALJ’s findings at steps one
10 through three, but asserts legal error at step four.³ At step one, the ALJ found that Adams had not
11 engaged in substantial gainful activity since June 1, 2010, the alleged onset date. AR 18. At step
12 two, the ALJ determined Adams had the following severe impairments: (i) degenerative changes
13 of the cervical spine and lumbar spine; (ii) status post laminectomy of the lumbar spine; (iii) status
14 post bilateral rotator cuff repair; (iv) status post repair of the right knee meniscus; and (v) obesity.
15 AR 18–20. At step three, the ALJ found that Adams did not have an impairment that satisfied the
16 requirements of any impairment described in the Listings. AR 20–21.

17 **C. Step Four – RFC Determination**

18 The fourth step requires an ALJ to determine whether a claimant has the RFC to perform
19 his or her past relevant work (“PRW”). 20 C.F.R. §§ 404.1520(f), 416.920(f). To answer this
20 question, an ALJ must first determine a claimant’s RFC. 20 C.F.R. §§ 404.1520(e), 416.920(e).
21 RFC is a function-by-function assessment of a claimant’s ability to do physical and mental work-
22 related activities on a sustained basis despite limitations from impairments. SSR 96-8p, 61 Fed.
23 Reg. 34474 (July 2, 1996). In making this finding, an ALJ must consider all the relevant evidence
24 such as symptoms and the extent to which they can be reasonably be accepted as consistent with
25 the objective medical evidence and other evidence. 20 C.F.R. §§ 404.1529, 416.929; SSR 96-4p,
26 61 Fed. Reg. 34488 (July 2, 1996); SSR 96-7p, 61 Fed. Reg. 34483 (July 2, 1996). To the extent

27
28 ³ The parties stipulate that the ALJ fairly and accurately summarized the evidence and testimony of record
in the Decision, except as specifically addressed in their arguments.

1 that statements about the intensity, persistence, or functionally limiting effects of pain or other
2 symptoms are not substantiated by objective medical evidence, an ALJ must make a finding on
3 the credibility of a claimant's statements based on a consideration of the entire case record. An
4 ALJ must also consider opinion evidence in accordance with the requirements of 20 C.F.R.
5 §§ 404.1527 and 416.927 as well as SSR 96-2p, 61 Fed. Reg. 34489 (July 2, 1996); SSR 96-5p,
6 61 Fed. Reg. 34471 (July 2, 1996); and SSR 06-3p, 71 Fed. Reg. 45593 (Aug. 9, 2006).

7 After considering the entire record, the ALJ concluded that Adams had the RFC to
8 perform light work as defined in 20 C.F.R. §§ 404.1567(b) and 416.967(b) except
9 he could stand or walk up to 4 hours in an 8 hour day; he could stand, sit, or walk
10 up to 45 minutes at a time before he would need to alternate position; he could
11 operate foot controls up to 1/3 of the day; he would be precluded from pushing,
12 pulling, or use of ladders, ropes or scaffolds; he could sustain postural changes up
to 1/3 of the day; he could not work around unprotected heights, or temperature
extremes; he could tolerate occasional exposure to vibration, humidity, wetness,
dust, fumes, or gases; he could work at an office with a moderate noise level; and
he was precluded from work requiring walking on rough or uneven surfaces.

13 AR 20–21. In making this finding, the ALJ “considered all symptoms and the extent to which
14 these symptoms can reasonably be accepted as consistent with the objective medical evidence and
15 the other evidence.” AR 21. He also considered opinion evidence. *Id.* Although the ALJ found
16 that Adams’ medically determinable impairments could reasonably be expected to cause his
17 alleged symptoms, he determined that Adams’ statements concerning the intensity, persistence and
18 limiting effects of those symptoms were not entirely credible. AR 23. The ALJ found that Adams’
19 pain allegations were not supported by the objective findings of the medical record and were
20 inconsistent with the medical opinion evidence. AR 22–24.

21 1. Mr. Adams’ Medical Records

22 The ALJ provided a comprehensive summary of Adams’ medical records at steps two and
23 three of the Decision. AR 18–21. In December 2010, Adams presented to Desert Family Medicine
24 complaining of low back pain. AR 18 (citing AR 273). He weighed 228 lbs. *Id.* He estimated
25 his pain level at 4/10. *Id.* His physical exam was unremarkable and neurology was normal. *Id.*
26 He returned four months later in March 2011, complaining of radiating back pain. AR 19 (citing
27 AR 270). He weighed 232 lbs. *Id.* On exam, his reflexes were reduced and he had spasm. *Id.*
28 An MRI of his lumbar spine confirmed borderline central canal stenosis at L5-S1, severe at L4-L5,

1 and mild at L3-L4. AR 19 (citing AR 322). At L5-S1, there was grade 1 retrolisthesis, broad-
2 based disc bulge. *Id.*

3 In May 2011, Adams presented to the Spine and Brain Institute. AR 19 (citing 282–83).
4 He complained of increased low-back pain, radiating down his left side and legs, and numbness
5 in his left buttock. *Id.* However, he denied coordination problems in his legs and arms. *Id.* On
6 exam, his weight was 230 lbs., his motor exam was normal, but he had weakness in the L5
7 distribution on the left. *Id.* The following month, Adams underwent a bilateral decompressive
8 laminectomy. AR 19 (citing AR 281). He returned to the Spine and Brain Institute in July 2011
9 for a post-op visit and reported a “significant decrease in pain.” AR 19 (citing AR 287). Treatment
10 notes from a September 2011 follow-up state that Adams was “making progress,” though he
11 reported a fair amount of myofascial pain in the lumbar region. AR 19 (citing AR 289–91).

12 In mid-December 2011, Adams returned to the Spine and Brain Institute reporting a sudden
13 onset of left leg pain. AR 20 (citing AR 292–94). The treatment notes states that all his symptoms
14 had resolved three months after surgery and he was doing well, but the pain returned in early
15 December without any trauma or injury. *Id.* He sought care at the emergency room, where he was
16 given a Toradol shot but it did not help. *Id.* He was prescribed Percocet. *Id.*

17 Adams returned to the Spine and Brain Institute nearly 11 months later in November 2012.
18 AR 20 (citing AR 295–96). He reported that the pain in his back had not improved since the 2011
19 laminectomy. *Id.* On exam, his gait, station, sensation, and reflexes were all normal. *Id.* A new
20 MRI of Adams’ lumbar spine confirmed degeneration at multiple levels, including scar tissue
21 enveloping the left S1 nerve root at the L5-S1 level. AR 20 (citing AR 279). At L4-L5, there was
22 bilateral lateral recess stenosis, but no appreciable foraminal stenosis, status-post posterior
23 decompression at this level. *Id.* The mild stenosis remained at L3-L4 with no change. *Id.*

24 Adams returned to the Spine and Brain Institute over 14 months later, in January 2014,
25 alleging worsening low back and leg pain. AR 20 (citing AR 389–91). However, the treatment
26 notes indicate that on exam he denied weakness in the extremities or back pain. *Id.* His motor
27 strength and sensation were also normal. *Id.*

1 A February 8, 2014 MRI confirmed disc bulging at L3-4, L4-L5, and L5-S1. AR 20 (citing
2 AR 401–02). Flattening of the ventral thecal sac with the bilateral laminectomy changes were
3 visible at L4-L5 and L5-S1. *Id.* There was moderately severe facet arthropathy at L4-L5. *Id.*

4 Mr. Adams underwent elective revision laminectomy and posterior interbody fusion at St.
5 Rose Dominican Hospital on April 1, 2014. AR 20 (citing AR 411). The ALJ described the
6 treatment notes regarding Adams’ postoperative course as “essentially unremarkable.” AR 20.

7 2. Consultative Exam with Dr. Cestkowski

8 In addition to medical records, the ALJ relied on the results of Adams’ February 28, 2014
9 comprehensive evaluation with Richard Cestkowski, D.O. AR 24 (citing AR 369–84
10 (Consultative Examination Report)). During the exam, Adams complained of chronic low back
11 pain, radiating into his lower extremities, and rated his pain level as 7-10/10. *Id.* He told Dr.
12 Cestkowski he could sit for about one hour, stand for about 20 minutes, and walk for about 30
13 minutes. *Id.* He avoided lifting. *Id.* He sometimes used a rolling walker for ambulation. *Id.* His
14 medication consisted of Robaxin, Neurontin, and Hydrocodone. *Id.*

15 On exam, Mr. Adams’ weight was 198 lbs. *Id.* There was mild tenderness and spasm on
16 palpitation of the lumbar spine. *Id.* Examination of the cervical spine was normal. *Id.* Neurology
17 confirmed slight weakness in the lower left extremity. *Id.* There was no evidence of chronic pain
18 syndrome in either lower extremity. *Id.* Dr. Cestkowski noted that Adams ambulated to the exam
19 room without use of an assistive device. AR 24 (citing AR 372–74). Based on these findings, Dr.
20 Cestkowski limited Adams to less than a full range of light exertion. AR 24 (citing AR 375–80).

21 Although Dr. Cestkowski was not a treating source, the ALJ noted that the doctor’s
22 findings and opinion were based on a detailed clinical orthopedic evaluation and review of
23 objective imaging and surgical reports from Adams’ treating sources. AR 24. The ALJ found that
24 Dr. Cestkowski’s “assessment was consistent with the objective evidence both from the clinical
25 exam as well as from the treating source records.” *Id.* In addition, there was “no offer of proof of
26 additional objective or other credible medical evidence supporting a more restrictive functional
27 assessment” as of the date of the Decision. *Id.* For these reasons, the ALJ gave the functional
28 capacity assessment by Dr. Cestkowski great weight. *Id.*

1 3. Mr. Adams' Credibility

2 The Decision provides details of a disability report Adams submitted in April 2013 in
3 which he complained of chronic throbbing pain in his lower back, knees, and shoulders. AR 22
4 (citing AR 209–12 (stating that Adams' first disability report was completed in December 2012
5 and describing changes)). Adams reported that his back was stiff, and he had more difficulty
6 moving around. *Id.* It took him two hours to get out of bed. *Id.* He did less walking, and overall,
7 did less physical activity. *Id.* He needed to change positions all the time because he could not get
8 comfortable. *Id.* He was fatigued often because the pain prevented him from sleeping well. *Id.*
9 He complained of tingling in both feet, poor concentration, poor focus, and memory problems. *Id.*
10 Although he reported these changes to his condition, the ALJ noted that Adams' report admitted
11 he had not received medical treatment. *Id.*

12 At the May 2, 2014 hearing, Mr. Adams testified that his weight was 195 lbs. AR 22, 30–
13 50 (Hearing Transcript). He had not worked for approximately four years. *Id.* He previously
14 earned money by donating plasma, but stopped when he had back surgery. *Id.* He testified he had
15 been trying to find work but no one was interested in hiring someone with a back problem. AR 23.
16 He alleged that in a standard 20-day work month, he would be able to work 8–10 days at most. *Id.*

17 Adams alleged he had a hereditary condition with a narrow spinal column and he would
18 eventually end up in a wheelchair. *Id.* He testified that his medication was not very effective, and
19 the pain and medication “took away” from his mental sharpness. *Id.* It was hard for him to focus
20 on things he needed to do. *Id.* If he sat for too long, he felt pressure and tingling in his thighs. *Id.*
21 He slept on the floor at his mother's house and he did not sleep well because of pain. *Id.*

22 Adams testified that his first back surgery did not help. AR 23. He had a second surgery
23 about four weeks prior to the hearing and did not yet know whether it was helpful. *Id.* He claimed
24 he used a walker if he had to go any distance. *Id.* He testified he had fallen many times and had
25 days when he could not be on his feet and he would crawl to the bathroom. *Id.* He drove to the
26 library and read books to pass the time and was able to manage his personal care. *Id.*

27 The Decision further states that Adams exercised and lost weight to help his back. *Id.* He
28 used the sauna and he rode a bike, although he was unable to ride at the time of the hearing because

1 of the recent surgery. *Id.* Over the preceding four years, he typically rode his bike once a week
2 for a few miles. *Id.*

3 The ALJ found that objective evidence confirmed multiple musculoskeletal impairments
4 that reasonably would result in some degree of physical pain. AR 23. However, Mr. Adams had
5 complained of chronic pain registering between 7–10/10. The ALJ determined the alleged level
6 of pain was not consistent with the treating source clinical evidence because, during exams, Adams
7 repeatedly was “noted to deny pain, to have nearly full range of motion, and to have only mild loss
8 of sensation.” *Id.* The ALJ therefore concluded that Adams’ allegations were inconsistent with
9 the treating source evidence and he was less than entirely credible. AR 23–24.

10 The ALJ also noted that Adams alleged a loss of mental focus as a result of his pain and
11 prescribed medication. AR 24. However, no such effects were described in the treating source
12 records or by Dr. Cestkowski. *Id.* Thus, the ALJ found that a supportable restriction in Adams’
13 ability to focus, remember, or concentrate could not be assessed when there was no medical
14 evidence to support his self-reports. *Id.* This was another reason the ALJ found Adams was less
15 than entirely credible. *Id.*

16 **D. Step Four – Ability to Perform PRW**

17 Once an ALJ has determined a claimant’s RFC as an initial consideration at step four, an
18 ALJ utilizes the RFC assessment to determine whether a claimant can perform his or her PRW.
19 20 C.F.R. §§ 404.1520(f), 416.920(f). PRW means work a claimant performed within the last 15
20 years, either as the claimant actually performed it or as it is generally performed in the national
21 economy. 20 C.F.R. § 404.1560(b). In addition, the work must have lasted long enough for a
22 claimant to learn the job and to perform it as SGA. 20 C.F.R. §§ 404.1560(b), 404.1565,
23 419.960(b), 416.965. If a claimant has the RFC to perform his or her past work, then an ALJ
24 makes a finding that a claimant is not disabled.

25 The Department of Labor publishes the Dictionary of Occupational Titles (DOT), which
26 provides “detailed physical requirements for a variety of jobs.” *Bray v. Comm’r of Soc. Sec.*
27 *Admin.*, 554 F.3d 1219, 1230 n.3 (9th Cir. 2009) (quoting *Massachi v. Astrue*, 486 F.3d 1149, 1153
28 n.8 (9th Cir. 2007)). The ALJ and/or a vocational expert utilizes the DOT in determining whether

1 a claimant, given his RFC, can perform his PRW. *Id.* (citing 20 C.F.R. § 404.1560(b)(2)).

2 At step four in the Decision, the ALJ concluded that Mr. Adams was capable of performing
3 his PRW as a tax preparer or office manager. AR 24–25. His PRW as a tax preparer is performed
4 at a sedentary level of exertion, semi-skilled work with a specific vocational profile (“SVP”) of 4,
5 and his PRW as an officer manager is performed at a light level of exertion, semi-skilled work
6 with an SVP of 4. AR 25.⁴ After comparing Adams’ RFC with the physical and mental demands
7 of his PRW, the ALJ found that Adams was able to perform his PRW as it is generally performed.
8 *Id.* As a result, the ALJ found that Adams was not disabled.

9 **ANALYSIS AND FINDINGS**

10 Reviewing the record as a whole, weighing both the evidence that supports and the
11 evidence that detracts from the ALJ’s conclusion, the court finds the ALJ’s decision is supported
12 by substantial evidence, and the ALJ did not commit reversible error. The sole issue on appeal is
13 whether the ALJ committed reversible error in failing to properly assess Adams’ credibility.
14 Adams seeks reversal and remand of the Decision arguing the ALJ failed to articulate adequate
15 reasons to determine Adams was not credible. Pl.’s Mot. (ECF No. 18). The Commissioner seeks
16 affirmance of the Decision asserting that the ALJ properly assessed Adams’ credibility and
17 determined that Adams’ is not disabled. Cross-Mot. & Resp. (ECF No. 25). Because the ALJ’s
18 adverse credibility determination was supported by specific, clear, and convincing reasons, the
19 court must uphold it.

20 **I. LEGAL STANDARDS**

21 The Ninth Circuit has established a two-step analysis for determining the extent to which
22 a claimant’s symptom testimony must be credited. *Molina v. Astrue*, 674 F.3d 1104, 1112 (9th
23 Cir. 2012) (citing *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009)); *see also Trevizo v.*
24 *Berryhill*, 871 F.3d 664, 678 (9th Cir. 2017). In the first step, the ALJ must determine whether the
25 claimant has presented objective medical evidence of an underlying impairment that could
26 reasonably be expected to produce the pain or other symptoms alleged. *Leon v. Berryhill*, 880

27 ⁴ The DOT describes Adams’ PRW as a tax preparer at No. 219.362-070 and office manager at No.
28 219.362-010. AR 25.

1 F.3d 1041, 1046 (9th Cir. 2017). In this first step, a claimant need only show that his or her
2 impairment could reasonably have caused *some degree* of the symptom alleged. *Garrison v.*
3 *Colvin*, 759 F.3d 995, 1014 (9th Cir. 2014) (quoting *Smolen v. Chater*, 80 F.3d 1273, 1282 (9th
4 Cir. 1996)). A claimant is not required to show that the impairment could reasonably be expected
5 to cause the severity of the symptoms or produce objective medical evidence of the pain, fatigue,
6 or the severity thereof. *Id.*

7 If a claimant satisfies the first step of this analysis, and there is no evidence of malingering,
8 the ALJ may only reject the claimant’s testimony about the severity of his symptoms by offering
9 ““specific, clear and convincing reasons”” for doing so. *Leon*, 880 F.3d at 1046 (quoting *Treichler*
10 *v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1101–02 (9th Cir. 2014)).⁵ As the Ninth Circuit
11 has recognized, this is not an easy requirement to meet because the “clear and convincing standard
12 is the most demanding required in Social Security cases.” *Garrison*, 759 F.3d at 1015 (quoting
13 *Moore v. Comm’r Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)). However, “the ALJ is not
14 required to believe every allegation of disabling pain,” otherwise disability benefits “would be
15 available for the asking, a result plainly contrary to 42 U.S.C. § 423(d)(5)(A).” *Molina*, 674 F.3d
16 at 1112 (quoting *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989)).

17 In evaluating a claimant’s testimony, the ALJ may use “ordinary techniques of credibility
18 evaluation.” *Molina*, 674 F.3d at 1112 (quoting *Turner v. Comm’r Soc. Sec.*, 613 F.3d 1217, 1224
19 n.3 (9th Cir. 2010)). For example, an ALJ may consider factors such as: (i) inconsistencies either
20 in the claimant’s testimony or between the testimony and the claimant’s conduct; (ii) unexplained
21 or inadequately explained failure to seek treatment or to follow a prescribed course of treatment;
22 (iii) whether the claimant engages in daily activities inconsistent with the alleged symptoms;
23 (iv) the observations of treating and examining physicians and other third parties regarding the

24 ⁵ The Commissioner acknowledges that the “clear and convincing” standard is a part of Ninth Circuit case
25 law, but maintains that the standard only applies in some circumstances and it is inconsistent with the
26 deferential “substantial evidence” standard prescribed by Congress in 42 U.S.C. § 405(g). *See* Cross-Mot.
27 & Resp. (ECF No. 25) at 5–6, n.3. The Ninth Circuit has specifically and repeatedly rejected this position.
28 *See, e.g., Brown-Hunter v. Colvin*, 806 F.3d 487, 492–93 (9th Cir. 2015) (noting that the Commissioner
disputed the “clear and convincing” standard and finding that *Burrell* foreclosed the Commissioner’s
argument); *Burrell v. Colvin*, 775 F.3d 1133, 1136–37 (9th Cir. 2014); *Garrison v. Colvin*, 759 F.3d 995,
1014 (9th Cir. 2014); *see also Trevizo*, 871 F.3d at 678–79 (stating the clear and convincing standard).

1 claimant's symptoms; (v) functional restrictions caused by the symptoms; and (vi) the claimant's
2 daily activities. *Molina*, 674 F.3d at 1112; *Rounds*, 807 F.3d at 1006; *Smolen*, 80 F.3d at 1284.

3 “A finding that a claimant's testimony is not credible ‘must be sufficiently specific to allow
4 a reviewing court to conclude the adjudicator rejected the claimant's testimony on permissible
5 grounds and did not arbitrarily discredit a claimant's testimony regarding pain’.” *Brown-Hunter*,
6 806 F.3d at 493 (quoting *Bunnell*, 947 F.2d at 345–46). “General findings are insufficient; rather,
7 the ALJ must identify what testimony is not credible and what evidence undermines the claimant's
8 complaints.” *Brown-Hunter*, 806 F.3d at 493 (quoting *Reddick v. Chater*, 157 F.3d 715, 722 (9th
9 Cir. 1998)). “Although the ALJ's analysis need not be extensive, the ALJ must provide some
10 reasoning” that will allow a reviewing court “to meaningfully determine whether the ALJ's
11 conclusions were supported by substantial evidence.” *Brown-Hunter*, 806 F.3d at 495 (quoting
12 *Treichler*, 775 F.3d at 1103).

13 In this case, the ALJ's credibility findings provide specific, clear and convincing reasons
14 for rejecting Adams' testimony about the severity of his symptoms. The Decision specifically
15 points out inconsistencies between his testimony, the medical records, and his function reports to
16 support the adverse credibility finding.

17 **A. The ALJ's Evaluation of Adams' Daily Activities is Free of Legal Error**

18 Mr. Adams claims the ALJ provided no meaningful analysis of his daily activities and
19 made only a passing reference that he could discount a claimant's subjective complaints if they
20 are inconsistent with daily activities. Mot at 8 (citing AR 23). The Commissioner argues the ALJ
21 correctly found that Adams' daily activities were at odds with Adams' claims of debilitating
22 symptoms, and the discrepancies explain why the ALJ determined Adams' reported symptoms
23 were not entirely credible. Cross-Mot. & Resp. at 6–8. The Commissioner maintains the ALJ
24 properly summarized Adams' daily activities, including activities that were inconsistent with his
25 purported symptoms like driving to the library to read books and riding a bicycle.

26 In considering a claimant's credibility, an ALJ may consider whether the claimant reports
27 participation in everyday activities that are inconsistent with his alleged symptoms. *Molina*, 674
28 F.3d at 1112–13 (citation omitted); *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005). Even

1 when those activities suggest some difficulty in functioning, “they may be grounds for discrediting
2 the claimant’s testimony to the extent that they contradict claims of a totally debilitating
3 impairment.” *Molina*, 674 F.3d at 1113.

4 The ALJ adequately described Mr. Adams’ relatively active lifestyle from the alleged onset
5 date of disability through the July 2014 Decision. The ALJ made specific findings about which of
6 Adams’ daily activities undermined his allegations of disability. For example, the ALJ found that
7 Adams had no physical problems with personal care, earned money by donating plasma, and drove
8 himself to the library and read books to pass the time. AR 23. Adams also exercised and lost a
9 considerable amount of weight to help his back. *Id.* The ALJ pointed out that, over the preceding
10 four years, Adams typically rode his bike once a week for a few miles. *Id.* Adams argues that the
11 ALJ’s analysis of Adams’ daily activities is lacking. The court disagrees. An ALJ is not required
12 to specifically recite “magic words” or an “incantation” to support his analysis. An ALJ’s decision
13 is sufficiently supported when the ALJ summarizes facts and conflicting clinical evidence in a
14 detailed and thorough fashion, stating his interpretation and making findings. *Magallanes v.*
15 *Bowen*, 881 F.2d 747, 755 (9th Cir. 1989) (noting that case law does not require an ALJ to
16 expressly state: I reject __ because of __ reason). The relevant and clear inference from the pages
17 summarizing Adams’ daily activities in detail is that such activities were inconsistent with Adams’
18 allegations of disabling functional limitations and the medical evidence. This is sufficient under
19 Ninth Circuit case law.

20 Mr. Adams’ testimony and medical records further support the ALJ’s adverse credibility
21 finding regarding his daily activities. Adams testified that he regularly drove himself to doctor’s
22 appointments, walked to the library, cooked his own meals, and exercised with weights and a
23 recumbent exercise bike. AR 30–50. In addition, Adams’ treatment notes from the hospital after
24 his second back surgery indicate that he was “fairly functional” and “independent in his activities
25 of daily living.” AR 419. The ALJ was permitted to make an adverse credibility finding based on
26 Adams’ daily activities as one of multiple factors considered. *See, e.g., Bray*, 554 F.3d at 1227
27 (activities supported adverse credibility finding where claimant was a caregiver, cooked, walked,
28 cleaned, and drove).

1 **B. The ALJ Did Not Commit Legal Error in Finding that the Medical Record**
2 **Contradicted Adams' Allegations of Disability**

3 Mr. Adams asserts the ALJ failed to appreciate the degenerative nature of Adams' back
4 pain and erroneously discounted his complaints as inconsistent with treating source clinical
5 evidence. Mot. at 9–12 (citing AR 23–24). Adams further claims the ALJ was not entitled to rely
6 on Dr. Cestkowski's opinion because the consultative examiner did not review the February 2014
7 MRI that confirmed Adams' need to undergo the April 2014 surgery. Adams therefore argues that
8 Cestkowski's opinion does not present a complete picture of Adams' back impairment and
9 subjective symptomology, and the ALJ's erroneous reliance on Dr. Cestkowski's opinion was not
10 harmless.

11 The Commissioner asserts the ALJ correctly found that objective evidence did not support
12 Adams' claims of disabling symptoms because the clinical findings were inconsistent with Adams'
13 allegations and did not include any medical opinions supporting his assertions. The Commissioner
14 points out that the Decision cites multiple treatment notes describing Adams' back pain as mild or
15 improved and indicating Adams had normal strength, tone, and reflexes, despite any pain. AR 18–
16 20. In addition, the Commissioner argues that Dr. Cestkowski's opinion contradicted Adams' pain
17 allegations and showed he functioned better than claimed. AR 24. The Commissioner further
18 asserts Adams' claims of disability were undermined by his failure to seek medical treatment.
19 AR 16, 22. For these reasons, the Decision is supported by substantial evidence and free from
20 legal error.

21 The court finds no legal error in the ALJ's evaluation of the medical evidence of record in
22 assessing Adams' credibility. To the extent there were conflicting opinions and testimony
23 regarding the degree of Adams' functional limitations, it was the ALJ's duty to resolve those
24 conflicts. “For highly fact-intensive individualized determinations like a claimant's entitlement to
25 disability benefits, Congress ‘places a premium upon agency expertise, and, for the sake of
26 uniformity, it is usually better to minimize the opportunity for reviewing courts to substitute their
27 discretion for that of the agency’.” *Treichler*, 775 F.3d at 1098 (quoting *Consolo v. Fed. Mar.*
28 *Comm'n*, 383 U.S. 607, 621 (1966)). Thus, courts must “leave it to the ALJ to determine

1 credibility, resolve conflicts in the testimony, and resolve ambiguities in the record.” *Id.* (citing
2 42 U.S.C. § 405(g); *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995)). The ALJ’s findings
3 must be upheld if they are supported by inferences reasonably drawn from the record. *Batson v.*
4 *Comm’r Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004). “Where evidence is susceptible
5 to more than one rational interpretation, the ALJ’s decision should be upheld.” *Trevizo*, 871 F.3d
6 at 674–75 (quoting *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007)).

7 Here, the ALJ’s credibility findings are a rational interpretation of the record as a whole.
8 “Contradiction with the medical record is a sufficient basis for rejecting the claimant’s subjective
9 testimony.” *Carmickle v. Comm’r Social Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008). Mr.
10 Adams had complained of chronic pain registering between 7–10/10. AR 23. However, multiple
11 treatment notes describe unremarkable physical exams, normal neurology, motor strength, and
12 sensation, and Adams denied weakness in the extremities or back pain. AR 18–20, 23–24 (citing
13 AR 273, 282–83, 389–91); *see also* AR 287–88, 364–67, 415–16. The ALJ thus determined the
14 alleged level of pain was not consistent with the treating source clinical evidence. AR 23–24.
15 Adams also alleged a lack of mental focus and chronic fatigue as a result of his pain and prescribed
16 medication. AR 24; *see also* AR 46, 210, 257. However, the ALJ found that no such effects were
17 described in the treating records or by the consulting physician. AR 24; *see also* AR 289–94, 297–
18 99, 386–94 (reporting no disorientation, inability to concentrate, or excessive fatigue). Adams
19 testified at the administrative hearing that his medication did not cause “a mental fog or anything”.
20 (Q. “Did you have any side effects of the medication ... a mental fog or anything? A. No, no.”).
21 AR 43–44. The ALJ therefore found no medical evidence to support Adams’ self-reports of
22 decreased ability to focus, remember, or concentrate. AR 24. These were among the reasons the
23 ALJ found Adams was less than entirely credible. AR 23–24.⁶ The record as a whole supports

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25 ⁶ A footnote in Adams’ motion to reverse or remand points out that effective March 28, 2016, Social
26 Security Ruling 96-7p was rescinded and Social Security Ruling 16-3p was implemented in its place. *See*
27 Motion, p. 6, footnote 1. Plaintiff states that Social Security Ruling 16-3p clarifies agency policy in
28 assessing a claimant’s subjective symptoms. The Commissioner’s cross-motion to affirm argues the court
should apply Social Security Ruling 96-7p because it was the regulation in effect at the time the ALJ made
its decision, and the regulation was not made retroactive. However, plaintiff’s footnote states “[f]or the
purposes of this case, there is no functional difference between the two Rulings other than the removal of
the term ‘credibility’”. The court therefore need not decide which regulation applies.

1 the ALJ's findings.

2 The ALJ also found that Dr. Cestkowski's objective examination undermined Adams'
3 allegations of disabling pain and limitations. AR 24. Dr. Cestkowski, conducted a consultative
4 examination, and is not one of plaintiff's treating physicians. However, Dr. Cestkowski is the only
5 medical source who provided a medical source opinion about Adams' ability to do work-related
6 activities. Cestkowski's exam of Adams revealed only a mild tenderness and spasm on palpitation
7 of the lumbar spine and neurology confirmed slight weakness in the lower left extremity. AR 373.
8 There was no evidence of chronic pain syndrome in either lower extremity. *Id.* Adams' gait and
9 station were unremarkable. AR 374. These limited exam findings prompted Dr. Cestkowski to
10 opine that Adams was capable of less than a full range of light exertion. AR 24 (citing AR 375–
11 80). Adams argues the ALJ erroneously relied on Cestkowski's opinion because his exam of
12 Adams was incomplete since the doctor did not review the February 2014 MRI resulting in the
13 recommendation for a second surgery. The ALJ expressly found there was “no offer of proof or
14 additional objective or other credible medical evidence supporting a more restrictive functional
15 assessment” as of the date of the Decision. *Id.* Adams testified at the administrative hearing that
16 it was “too early to tell” whether the second surgery helped and that his doctor said the surgery
17 was successful. AR 36. No other evidence was presented to the ALJ about the second surgery.

18 No physician, treating or otherwise, opined that Adams was totally disabled or unable to
19 work. An April 2, 2014 medical consult conducted at the hospital by Dr. Raroque at the request
20 of Adam's surgeon, Dr. Duke, following Adams' revision laminectomy states “[a]t baseline, he is
21 fairly functional, independent in his activities of daily living.” AR 418-420. *See Matthews v.*
22 *Shalala*, 10 F.3d 678, 680–81 (9th Cir. 1993) (in upholding the Commissioner's non-disability
23 decision, the Ninth Circuit emphasized: “None of the doctors who examined [claimant] expressed
24 the opinion that he was totally disabled”); *Curry v. Sullivan*, 925 F.2d 1127, 1130 n.1 (9th Cir.
25 1990) (upholding Commissioner and noting that after surgery, no doctor suggested claimant was
26 disabled). The ALJ found that Dr. Cestkowski's opinion was “consistent with the objective
27 evidence both from the clinical exam as well as from the treating source records.” AR 24.
28

1 As the ALJ found, Adams suffers from severe impairments of the cervical and lumbar
2 spine. However, reviewing the record as a whole, Adams did not meet his burden of establishing
3 he was disabled as defined by the Social Security Act from June 1, 2010 through the date of the
4 ALJ's July 8, 2014 decision. The ALJ did not err by giving Cestkowski's opinion great weight. It
5 was the ALJ's duty to resolve conflicts between Adams' testimony, the treatment notes and
6 records, and Dr. Cestkowski's opinion. If the record will support more than one rational
7 interpretation, the court must uphold the Commissioner's interpretation. *See Burch*, 400 F.3d at
8 679. The ALJ's findings are amply supported by the record and inferences reasonably drawn from
9 the record.

10 The ALJ's Decision comprehensively reviewed and summarized Adams' medical records.
11 The ALJ found that Adams' allegations of disabling pain and limitations were contradicted by
12 minimal objective findings during physical examinations. The ALJ's adverse credibility
13 determination was supported by specific, clear, and convincing reasons, and the Decision is
14 supported by substantial evidence. *See Batson v. Comm'r Soc. Sec. Admin.*, 359 F.3d 1190, 1193
15 (9th Cir. 2004). The court finds that the ALJ did not err in his assessment that Adams could
16 perform light work with certain restrictions, and his past relevant work as a tax preparer and office
17 manager. The ALJ's determination that he was not disabled must be upheld because it is supported
18 by substantial evidence.

19 CONCLUSION

20 Judicial review of a decision to deny disability benefits is limited to determining whether
21 the decision is based on substantial evidence reviewing the administrative record as a whole. It is
22 the ALJ's responsibility to make findings of fact, draw reasonable inferences from the record as a
23 whole, and resolve conflicts in the evidence and differences of opinion. Having reviewed the
24 Administrative Record as a whole, and weighing the evidence that supports and detracts from the
25 Commissioner's conclusion, the court finds that the ALJ's decision is supported by substantial
26 evidence under 42 U.S.C. § 405(g).

27 Accordingly,
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- Dated this 16th day of January, 2019.

PEGGY A. LEEN
UNITED STATES MAGISTRATE JUDGE